THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 17658 of 2006

O r d e r:

Assailing the award dated 31.05.1996, passed by the Labour Court-I, Hyderabad, in I.D. No. 232 of 1992, published vide G.O. Rt. No. 2215, dated 06.08.1996, insofar as denying 75% of back wages, the wife of the deceased-workman filed this writ petition.

The petitioner's husband, namely late M. Yadagiri, while working as ADC in the 2nd respondent-APSRTC, was charge sheeted alleging that he unauthorisedly absent from duties from 26.06.1987 onwards. The petitioner's husband submitted his explanation denying the charges. Dissatisfied with the explanation, the 2nd respondent ordered for enquiry, and the Enquiry Officer, who conducted enquiry into the charges leveled against the petitioner's husband, submitted report holding that the charges are proved. Based on the enquiry report, the 2nd respondent, namely the Depot Manager, issued notice to the petitioner's husband, calling upon him to show cause as to why he should not be removed from service. The petitioner's husband submitted his explanation thereto. However, vide proceedings dated 28.09.1987, the 2nd respondent removed the petitioner's husband from service. Assailing the said order of removal, the petitioner's husband preferred appeal and review petition before the appellate authorities, which were rejected. Thereupon, he raised an industrial dispute in I.D. No. 232 of 1992, and the Labour Court, by award dated 31.05.1996, directed the respondents-Corporation to reinstate the petitioner's husband into service with continuity of service, 25% of the back wages and other attendant benefits. Assailing the award of the Labour Court,

insofar as denying 75% of back wages, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-APSRTC, and perused the award of the Labour Court.

The learned counsel for the petitioner submitted that the Labour Court having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate authority, and having ordered reinstatement of the petitioner's husband into service with continuity of service, committed error in denying him 75% back wages, and the same is illegal and arbitrary. He thus, prays to set aside the award of the Labour Court, insofar as it denied 75% of back wages.

On the other hand, learned Standing Counsel for the 2nd respondent-APSRTC submitted that the charges against the petitioner's husband stood proved in the departmental enquiry. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the Labour Court, after re-appreciation of the entire material and evidence on record, set aside the removal order passed by the 2nd respondent and ordered reinstatement of the petitioner's husband into service with continuity of service, but since the petitioner's husband failed to substantiate his contention by placing any satisfactory evidence during the course of enquiry that in spite of his best efforts he could not secure alternative employment, the Labour Court, held that he is not entitled to full back wages and accordingly awarded 25% back wages, and denied him 75% back wages, which cannot be said to be illegal and arbitrary, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are

very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The petitioner's husband, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner's husband was charge sheeted on the ground that he unauthorisedly absent from duties from 26.06.1987 onwards. The charge leveled against the petitioner's husband stood proved in the departmental enquiry. However, the Labour Court, after re-appreciation of the entire material and evidence on record, having found that the management failed to establish that the petitioner 's husband was unauthorisedly absent from duties, set aside the removal order passed by the 2nd respondent and ordered reinstatement of the petitioner's husband into service with continuity of service, 25% of the back wages. The Labour Court, having found that since the petitioner's husband failed to substantiate his contention by placing any satisfactory evidence during the course of enquiry that in spite of his best efforts he could not secure alternative employment, held that he is not entitled to full back wages and accordingly awarded 25% of back wages. Merely because the petitioner's husband was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to full backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner's husband was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate authority, and ordered reinstatement of the petitioner's husband into service on the ground that the management failed to establish that the petitioner's husband was unauthorisedly absent from duties.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the Labour Court, it does not mean that the petitioner's husband is entitled to be granted full backwages, more so when the Labour Court clearly held that since the petitioner's husband failed to establish that in spite of his best efforts, he could not secure any alternative employment, he is not entitled to full back wages, but he is entitled to 25% of back wages.

For the foregoing reasons, the writ petition is devoid of merit and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 31st August, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63